

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Mar Blondet	Team: Squad #12	CCRB Case #: 201906653	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 07/30/2019 4:30 AM	Location of Incident: [REDACTED]	Precinct: 114	18 Mo. SOL 1/30/2021	EO SOL 9/16/2021	
Date/Time CV Reported Tue, 07/30/2019 6:34 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Tue, 07/30/2019 6:34 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Marlo Alvarado	07307	958237	114 PCT
2. POM Kevin Mendez	11189	964653	114 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Marlo Alvarado	Abuse: At the intersection of § 87(2)(b) and § 87(2)(b) in Queens, Police Officer Marlo Alvarado threatened to arrest § 87(2)(b)	[REDACTED]
B.POM Marlo Alvarado	Abuse: At the intersection of § 87(2)(b) and § 87(2)(b) in Queens, Police Officer Marlo Alvarado threatened § 87(2)(b) with the use of force.	[REDACTED]
C.POM Kevin Mendez	Force: At the intersection of § 87(2)(b) and § 87(2)(b) in Queens, Police Officer Mendez struck § 87(2)(b) with a car door.	[REDACTED]
D.POM Kevin Mendez	Discourtesy: On § 87(2)(b) between 28th Street and § 87(2)(b) in Queens, Police Officer Kevin Mendez spoke discourteously to § 87(2)(b)	[REDACTED]

Case Summary

On July 30, 2019, § 87(2)(b) filed this complaint with the CCRB via the on-line website.

On July 30, 2019, at approximately 4:30 a.m., § 87(2)(b) was driving southbound on § 87(2)(b) in Queens. He was stopped by PO Marlo Alvarado and PO Kevin Mendez of the 114th Precinct, near the intersection of § 87(2)(b). PO Alvarado requested § 87(2)(b)'s license and registration. When § 87(2)(b) refused, PO Alvarado threatened to arrest § 87(2)(b) (**Allegation A: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) complied and handed his license and registration to PO Alvarado. After walking back to their RMP, both officers walked back to § 87(2)(b) Moury's vehicle, each with a summons. § 87(2)(b) started filming the interaction with his phone-camera. After PO Mendez handed § 87(2)(b) the summons, § 87(2)(b) stepped out of the vehicle, faced the officers and held his phone in his hand in front of him. Both officers ordered § 87(2)(b) to step back inside his vehicle. PO Alvarado drew his taser and pointed it at § 87(2)(b) (**Allegation B: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) stepped back inside his vehicle and PO Mendez closed the door, hitting § 87(2)(b) in the leg with it (**Allegation C: Force**, § 87(2)(g)). The officers left after a brief interaction between PO Mendez and § 87(2)(b).

At approximately 5:18 a.m. on the same day, § 87(2)(b) was walking east on § 87(2)(b) in Queens, when he saw PO Mendez and PO Alvarado driving by in their police vehicle. § 87(2)(b) stated that he saw PO Mendez laughing at him. § 87(2)(b) lifted his middle finger at the two officers. § 87(2)(b) stated that PO Mendez then used the PA system of his vehicle to say to him, "Fuck you, buddy," (**Allegation D: Discourtesy**, § 87(2)(g)).

The investigation obtained BWC video footage of this incident from PO Alvarado (Board Review 03) and PO Mendez.

Findings and Recommendations

Allegation (A) Abuse of Authority: At the intersection of § 87(2)(b) and § 87(2)(b) in Queens, Police Officer Marlo Alvarado threatened to arrest § 87(2)(b)

It is undisputed that on July 30, 2019, at 4:30 a.m., at § 87(2)(b), PO Alvarado and PO Mendez stopped § 87(2)(b)'s vehicle. § 87(2)(b) argued with PO Alvarado and refused to give him his license and registration. It is also undisputed that PO Alvarado threatened to arrest § 87(2)(b).

In his statement to the CCRB, § 87(2)(b) (Board Review 01) stated that at the time of the incident he was in his taxi cab, which is a yellow 2004 Toyota Prius, driving south on § 87(2)(b). He did not have any passengers at the time. At the intersection of § 87(2)(b), § 87(2)(b) noticed a marked police vehicle behind his own. When the traffic light turned green, the police vehicle activated its lights and § 87(2)(b) pulled his vehicle over approximately 100 feet from the intersection. PO Mendez approached § 87(2)(b)'s vehicle on the driver's side and PO Alvarado approached on the passenger side. PO Alvarado requested § 87(2)(b)'s license and registration and § 87(2)(b) refused to provide it. PO Alvarado told § 87(2)(b) that he would be arrested if he continued to refuse to provide his license and registration. § 87(2)(b) told them it was okay if they wanted to arrest him. PO Alvarado told § 87(2)(b) that he was going to be

removed from his vehicle and arrested. § 87(2)(b) then complied and handed PO Mendez his license.

PO Alvarado testified that on July 30, 2019, he was stationed at § 87(2)(b), conducting traffic enforcement in a marked police vehicle with PO Mendez (BR02). PO Alvarado observed § 87(2)(b) vehicle run a red light and pulled the vehicle over. PO Alvarado asked § 87(2)(b) for his license and registration and § 87(2)(b) refused. PO Alvarado stated that he explained to § 87(2)(b) that if he did not provide his license and registration, he could be arrested for obstruction of governmental administration. § 87(2)(b) then gave PO Alvarado his license and registration. PO Alvarado issued § 87(2)(b) a summons for running a red light.

PO Alvarado and § 87(2)(b)'s statements are consistent with the depiction of the events shown in PO Alvarado's BWC video of the incident (Board Review 03).

In the court case People v. Alston, 9 Misc. 3d 1046 (2005), the courts held that while there are no Vehicle and Traffic Law (VTL) statutes that make it a violation or a crime to refuse to supply an officer with a valid driver's license, VTL "provisions are part of a statutory scheme by which a driver who fails to produce the requested document is presumed to be driving without it." As such, a motorist's failure to produce a license is presumptive evidence of the unlawful act of driving without a license. People v. Alston further notes that when an officer is unable to issue a summons to a motorist due to the motorist's unwillingness or inability to provide identification, an officer is permitted to arrest the motorist.

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: At the intersection of § 87(2)(b) and § 87(2)(b) in Queens, Police Officer Marlo Alvarado threatened § 87(2)(b) with the use of force.

It is undisputed that § 87(2)(b) stepped out of his vehicle with his phone in his hand after he was issued the two summonses by PO Alvarado and PO Mendez. It is also undisputed that PO Alvarado drew his Taser and pointed it at § 87(2)(b) § 87(2)(b), § 87(2)(g)

In his statement to the CCRB, § 87(2)(b) stated that after being issued the two summonses, he stepped out of his vehicle holding his camera phone. § 87(2)(b) explained to the officers that his intention was to capture his location on video. § 87(2)(b) stated that he only had one foot outside his vehicle. § 87(2)(b) pointed his camera towards the rear of his vehicle, attempting to capture the nearest street sign that would help him identify where he was. § 87(2)(b) believed he was free to leave the vehicle after he had been issued the summonses. § 87(2)(b) stated that PO Alvarado then withdrew a "yellow tool," identified by the investigation as a Taser, pointed the Taser at his chest, and told him to get back inside his vehicle. § 87(2)(b) then placed his foot back inside the vehicle.

In his statement to the CCRB, PO Alvarado stated that after he had handed the summons to § 87(2)(b) and started walking back to his police vehicle, he heard PO Mendez say, “Get back in your car,” (Board Review 02). PO Alvarado saw that § 87(2)(b) had stepped out of his vehicle. He described § 87(2)(b) as “agitated,” and added that § 87(2)(b) exited his vehicle “rapidly.” PO Alvarado walked around and stood by the rear § 87(2)(b)s vehicle. PO Alvarado commented that for any vehicle stop, officers never know what to expect, and that it is unusual for a motorist to exit their vehicle during a stop. PO Alvarado observed that § 87(2)(b) was recording him and PO Mendez with his phone. PO Alvarado stated that § 87(2)(b) walked a few feet toward him before stopping. PO Alvarado stated that he then withdrew his Taser, pointed it at § 87(2)(b) and ordered him to step back inside the vehicle. PO Alvarado stated, pointed it at § 87(2)(b) and ordered him to step back inside the vehicle. PO Alvarado stated that he pointed his Taser at § 87(2)(b) to make sure that § 87(2)(b) did not have anything else in his hands. PO Alvarado ordered § 87(2)(b) to step back inside his vehicle two or three times before § 87(2)(b) complied.

PO Alvarado’s BWC video of this portion of the incident shows § 87(2)(b) exit his vehicle with his phone in his hand (Board Review 03). § 87(2)(b) stands by the driver’s side of his vehicle with both feet outside of the car. § 87(2)(b) is not depicted walking towards PO Alvarado; instead he stands still to the left of PO Mendez before he sits back down inside his vehicle. Therefore, the video is inconsistent with § 87(2)(b)s statement that he was only partially outside his vehicle when the threat of force occurred, and with PO Alvarado’s statement that § 87(2)(b) was walking toward him. The video does not note that PO Alvarado drew his Taser.

According to the NYPD Patrol Guide, Section 221-02 (Board Review 05), all force used by police officers “must be reasonable,” and excessive force will not be tolerated.” Use of force by a member of service is defined as reasonable by a set of standards defined in Section 221-01.

Section 221-08 of the Patrol Guide (Board Review 06) provides an identical list for factors to consider before using a Conducted Electrical Weapon / Taser. The following is copied directly from the identical lists that appear in Sections 221-02 and 221-08 of the Patrol Guide.

Section (a), refer to the, “nature and severity of the crime/circumstances.”

Section (b) refers to “actions taken by the subject.”

Section (e) and (f) refer to “whether the subject is actively resisting custody,” and “whether the subject is attempting to evade arrest by flight.”

Sections (g) and (j) refer to “number of subjects in comparison to MOS,” and “presence of a hostile crowd.”

§ 87(2)(b), § 87(2)(g)

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Allegation (C) Force: At the intersection of § 87(2)(b) and § 87(2)(b) in Queens, Police Officer Mendez struck § 87(2)(b) with a car door.

It is undisputed that PO Mendez closed § 87(2)(b)'s door after § 87(2)(b) had stepped back inside his vehicle. § 87(2)(b), § 87(2)(g)

In his statement to the CCRB, § 87(2)(b) stated that after he stepped back into his vehicle PO Mendez closed his door “very hard,” hitting the side of his knee (Board Review 01). He stated that he was not injured but that “it hurt a little.”

In his statement to the CCRB, PO Mendez stated that after § 87(2)(b) sat back down inside his vehicle, he closed § 87(2)(b)'s door (Board Review 07). PO Mendez stated that he used the amount of force used by “an average person closing a door.” PO Mendez stated he did this simply “to make sure [the door] was closed.” He added that he did not feel the door hit § 87(2)(b)

PO Alvarado's BWC, which shows the most complete view of this portion of the incident, shows § 87(2)(b) sit down inside his vehicle, his head turned toward the rear of his vehicle, holding his phone slightly outside of the vehicle (Board Review 03). PO Mendez stands approximately 3 to 4 feet away from § 87(2)(b) next to the open driver's side door. PO Mendez places his left hand on the window frame of the open door and begins closing the door slowly before the motion of his hand accelerates. PO Mendez's hand lets go of the door before it is completely closed. § 87(2)(b)'s legs are not visible at any point during this portion of the incident, and no sound is heard that could indicate that the door struck § 87(2)(b)'s knee. § 87(2)(b) can be heard saying to PO Mendez, “Why are you pushing me?” to which PO Mendez replied, “We pushed you? I didn't even touch you.” § 87(2)(b) is also heard saying, “You pushed the door, you hit me.”

§ 87(2)(b), § 87(2)(g)

Allegation (D) Discourtesy: On § 87(2)(b) between § 87(2)(b) § 87(2)(b) in Queens, Police Officer Kevin Mendez spoke discourteously to § 87(2)(b)

In his statement to the CCRB, § 87(2)(b) stated that at approximately 5:18 a.m., he was walking east on 36th Avenue between 28th Street and 29th Street. § 87(2)(b) stated that he saw a police vehicle driving west on 36th Street and PO Alvarado and PO Mendez were inside the vehicle. He saw PO Mendez laughing at him. Upon seeing this, § 87(2)(b) raised his middle finger at the officers / police vehicle. § 87(2)(b) stated that PO Mendez then used the speaker system on his police vehicle to respond, “Fuck you, buddy,” before driving away. § 87(2)(b) did not see anyone else on the street that may have witnessed the incident.

A Google Maps Street View search showed there were no security cameras at the location that could have possibly captured this incident.

There is no BWC video of this portion of the incident.

In his statement to the CCRB, PO Mendez stated that he did not see § 87(2)(b) again after the vehicle stop. He stated that he did not use the speaker system on his vehicle to say, “Fuck you, buddy,” to § 87(2)(b). Furthermore, PO Mendez stated that he did not recall using his speaker system to address any pedestrians on the date (or tour) of incident.

In his statement to the CCRB, PO Alvarado stated that he did not see § 87(2)(b) again after the vehicle stop and that neither he or PO Mendez used the speaker system of their vehicle to say, “Fuck you, buddy,” to § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

Civilian and Officer CCRB Histories

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- PO Alvarado has been a member of service for four years and this is the first CCRB complaint to which he has been a subject.
- PO Mendez has been a member of service for approximately two years and has been a subject in two CCRB complaint and four allegations, of which one has been unsubstantiated. PO Mendez’s CCRB history does not reflect any apparent pattern pertinent to this investigation.
 - 201809325 involved allegations of failure to produce a stop and frisk report and failure to prepare a memo book entry, both of which were closed as Other Misconduct. Additionally, this case involved allegations of a Stop, which were closed as exonerated.
 - 201901623 involved unsubstantiated allegations of entry of premises.

Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation in the course of providing his in-person statement.
- According to an OCA search, § 87(2)(b) has no conviction history (Board Review 10).
- § 87(2)(b) § 87(2)(b)

Squad No.: 12

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date